

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ALEX CONTRERAS,)	Case No. DISM-04-0014
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
UNIVERSITY OF WASHINGTON,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and BUSSE NUTLEY, Vice Chair. The hearing was held in Conference Room 2097 in the Pat Steele Building at Harborview Medical Center, Seattle, Washington on February 18, 2005.

1.2 **Appearances.** Appellant Alex Contreras was present and was represented by Edward E. Younglove III, of Parr Younglove Lyman & Coker, P.L.L.C. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for just cause, including but not limited to reasons of malfeasance and gross misconduct for destruction of security and parking systems at Harborview Medical Center.

II. FINDINGS OF FACT

2.1 Appellant was a Maintenance Mechanic I and permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on February 13, 2004.

2.2 Appellant began working as a custodian on the University of Washington campus and was employed by the University for approximately 14 years. In September 1994, Appellant began working as a Maintenance Custodian in the Environmental Services Department at Harborview Medical Center (HMC). In March 2002, Appellant's position was reclassified to Maintenance Mechanic I within the Environmental Services Department. Appellant's primary duties were to perform work of a semi-skilled nature in the maintenance and repair of department custodial equipment.

2.3 Appellant's personnel file reflects previous letters of reprimand and letters of counseling related to insubordination and inappropriate behavior. Appellant also received a March 1991 memo from the program manager at the Department of Housing and Food Services, located on the University campus, in which the manager addressed Appellant's unacceptable performance for driving across a grass lawn and causing damage.

2.4 While working at HMC, Appellant paid for parking and parked his vehicle in an employee parking garage located on Boren Street. In April 2003, HMC's Parking Services installed a sophisticated access control system for vehicles using the garage. A sign posted next to the scanning control box advised employees that a new access control system was in effect, instructed employees to use their HMC badges to access the garage, and informed employees experiencing

1 problems to call parking services, listing the telephone number to call. In addition, a red phone
2 with a direct line to the security office is located on the wall, just to the right of the entrance.
3 Employees also use their identification badges to activate the gate arm when they exit the garage.
4

5 2.5 On the afternoon of Friday, December 26, 2003, Appellant was driving out of the Boren
6 parking garage at the end of his work shift, when he noticed the vehicle ahead of him having
7 difficulty getting the gate arm to raise. Appellant attempted to assist the driver ahead of him, and
8 when Appellant's identification badge also failed to activate the gate arm, he removed the gate arm
9 and propped it up against the control box. Appellant did not notify anyone of his actions.
10

11 2.6 On Saturday and Sunday December 27 and 28, 2003, several employees arriving to work
12 were unable to access the parking garage. When employees experience parking problems on the
13 weekend, the protocol is to contact the security office. Consequently, security officers responded to
14 several complaints at the Boren parking garage. Parking Services, however, did not become aware
15 of any problems until the following Monday.
16

17 2.7 On or about January 2, 2004, the Public Safety Office (security) contacted Kathryn Olfs,
18 Operations Manager for the Environmental Services Department of Hospitality Services, to show
19 her a security video from the Boren garage that showed Appellant removing the gate arm. On
20 January 6, 2004, Ms. Olfs spoke with Appellant, and he admitted that he pulled the security arm
21 because it was not working properly. Appellant also admitted that he did not inform anyone that he
22 had removed the arm.
23

24 2.8 Ms. Olfs was concerned that Appellant, as a maintenance employee, dismantled a security
25 device and determined Appellant's actions were negligent, compromised the security system, and
26 greatly inconvenienced many hospital employees. In a memo dated January 9, 2004, to Johnese

1 Spisso, Chief Operating Officer at HMC, Ms. Olf's recommended Appellant's dismissal for the
2 destruction of Medical Center property, alleging Appellant's actions caused the destruction of
3 security systems and parking control systems.

4
5 2.9 On January 21, 2004, Ms. Olf's met with Appellant and his representative for a
6 predetermination meeting. During the meeting Appellant stated that he removed the arm as a
7 temporary solution because he had to get home to take care of an urgent family matter. Appellant
8 said he knew of several other times when the system had not been working properly and that cars
9 were beginning to pile up.

10
11 2.10 Parking Services Manager Linda Johnson explained that the parking system was fairly new
12 at the time Appellant removed the arm and that parking services had been troubleshooting existing
13 problems and could often reset the gate arm function from the parking office within a few minutes.
14 Ms. Johnson explained how the tracking system does not recognize that an employee has left the
15 garage when the system is malfunctioning. As a result, the gate arm will not raise the next time the
16 employee attempts to access the garage. Ms. Johnson described frequent problems that parking
17 services had encountered with people removing the gate arms, and parking services had asked the
18 security office to monitor the garage as a result.

19
20 2.11 Ms. Spisso, Appellant's appointing authority, reviewed Ms. Olf's recommendation and
21 Appellant's responses in the predetermination meeting and ultimately determined Appellant's
22 conduct warranted termination. By letter dated January 22, 2004, Ms. Spisso notified Appellant of
23 his dismissal for malfeasance and gross misconduct, effective February 6, 2004.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts Appellant's position as a maintenance mechanic was to repair items, yet he dismantled parking equipment. Respondent argues Appellant disabled the parking system, failed to report his actions or that the system was having problems, and inconvenienced many HMC employees who reported to work over the following weekend. Respondent argues that a sign clearly instructs employees to call parking with any problems and argues Appellant failed to follow that instruction. Respondent further argues Appellant could have used the red phone on the wall to call security or contacted the parking office once he left the garage. Respondent argues Appellant never told anyone he dismantled the system and asserts Appellant only admitted to removing the gate arm after his supervisor confronted him. Respondent, therefore, argues termination is appropriate.

3.2 Appellant argues he has been truthful about removing the gate arm. Appellant asserts there were constant problems with the parking system and that he frequently noticed that gate arms had been removed or were missing. Therefore, Appellant argues he did not realize that removing the arm would cause significant problems. Appellant contends he never received any training on the new parking system and had no idea about the sophistication of the system. Appellant asserts the gate arm was easily removed and contends he did not intend to cause any damage. Rather, Appellant contends he was a paying customer of the garage who was in a hurry due to a family obligation to return his daughter to her mother after a visitation. Appellant argues he was a fourteen year employee with no formal progressive discipline, argues he was off duty at the time of the incident, and argues his conduct does not warrant dismissal.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
2 the charges upon which the action was initiated by proving by a preponderance of the credible
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-
5 240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

6
7 4.3 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
8 do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with
9 the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-
10 135 (1995).

11
12 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
13 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
14 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
15 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

16
17 4.5 There is no question that Appellant dismantled the gate arm from the socket and failed to
18 call the parking office. As an HMC employee, Appellant should have employed better judgment
19 and called the parking telephone number listed on the sign. However, Respondent has not proven
20 that Appellant's conduct constitutes malfeasance or gross misconduct. The evidence supports there
21 were ongoing problems with the new parking system and that the gate arm had been removed on
22 several occasions. In addition, security officers were aware of the problems with the parking garage
23 over the weekend; however, Parking Services was not made aware of any problems until Monday.

24
25 4.6 In determining whether a sanction imposed is appropriate, consideration must be given to
26 the facts and circumstances, including the seriousness of the offenses. The penalty should not be

1 disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence,
2 to deter others from similar misconduct, and to maintain the integrity of the program. An action
3 does not necessarily fail if one cause is not sustained unless the entire action depends on the
4 unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

5
6 4.7 Under the circumstances presented, we conclude that the sanction of dismissal is too severe,
7 and a three-day suspension should be adequate to impress upon Appellant the seriousness of his
8 actions and the resulting consequences.

9
10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Alex Contreras is modified to
12 a three-day suspension.

13
14 DATED this _____ day of _____, 2005.

15
16 WASHINGTON STATE PERSONNEL APPEALS BOARD

17
18 _____
19 Walter T. Hubbard, Chair

20
21 _____
22 Busse Nutley, Vice Chair